

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3937 of 1999

with

SP. CIVIL APPLICATIONS No 3965, 4025, 4026 & 4140 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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SAMUBEN MANABHAI

Versus

EXECUTIVE ENGINEER

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Appearance:

1. Sp. Civil Applications No. 3937, 4025, 4026, 4140 of 1999  
MR MC BAROT for Petitioners  
MR SN SHELAT, ADDL.ADV. GEN. for Respondents
2. Special Civil Application No 3965 of 1999  
MR IS SUPEHIA for Petitioners  
MR SN SHELAT, ADDL. ADV. GEN. for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/08/1999

## ORAL JUDGEMENT

1. As in all these matters, identical issues have been raised, the same are being taken up for hearing together and are being disposed of by this common judgment.

The facts of this case are being taken up from the special civil application No.3937 of 1999.

2. Though learned counsel for the petitioners, Shri M.C. Barot, has raised manifold contentions on the merits of the matter, in view of the order which I propose to pass in these matters, I do not consider it to be in the interest of the petitioners themselves to decide those contentions on merits otherwise if they approach to the Labour Court by raising an industrial dispute, their case may be prejudiced.

3. I am constrained to observe that despite of repeated observations made by the Court that these are the matters where the petitioners have to raise an industrial dispute, the petitioners' counsel, Mr. M.C. Barot, insisted for deciding the matters on the points raised by him. Prima-facie on many of the contentions raised by the learned counsel for the petitioners, I am of the tentative opinion that none of them has any merits but for the reasons aforesaid, I am not expressing the final opinion though it is insisted by Mr. M.C. Barot counsel for the petitioners. The court has not to decide the matters as what the counsel for the petitioners desire.

4. Shri Supehia has raised some additional points but those points can also be raised before the Labour Court by raising an industrial dispute and further prima-facie also I am not tentatively in agreement with those contentions of Shri Supehia.

5. It is a case where the petitioners-workmen have come up before this Court with two fold grievances. Firstly, it is contended that their services have wrongly been terminated and secondly, that in view of the Government Resolution dated 17th October, 1988 their services could have been regularised. Supplementing this contention, it is contended that the respondents deliberately not permitted the petitioners to complete 240 days services in a year for five years so that they may not get the benefit of the resolution aforesaid. In the writ petition, they have cited the cases of those daily wagers, who though were engaged as daily wagers much after the petitioners, as per their case, were

allowed to complete 240 days in a year for five years and they started to get the benefit of the Resolution dated 17th October, 1988.

6. I have minutely examined the matters but it is difficult to accept this contention, at this stage, more so, when it is a highly disputed question of fact. For this contention, the evidence has to be recorded and then only some conclusion can be reached. However, it is a fact that the petitioners have not completed 240 days in a year for five years. It is a case where the petitioners are daily wagers and as in the concerned year they have completed more than 240 days and as per the case of the respondents there is no work available in the project concerned there services are terminated and to see that the petitioners may not raise the technical objection, after giving them the benefit of section 25-F of the Industrial Disputes Act, 1947.

7. It is the contention of the counsel for the petitioners that their services could not have been terminated in view of the resolution dated 17th October, 1988. However, as stated earlier, as I am of the opinion that it is a fit case where only remedy to the petitioners, and which is also more efficacious, is to raise an industrial dispute, I am not deciding this point finally.

8. Shri S.N. Shelat, Additional Advocate General, very fairly submitted before this court that the petitioners will still continue in the list of daily wagers maintained for the project and as and when any work is available, in the order of the list, they will be given the work. It has further been stated by Shri Shelat that the respondents shall comply with the provisions of Section 25-H of the Industrial Disputes Act, 1947 as well as Rules, 78 and 79 of the Central Industrial Dispute Rules. Shri Shelat states that the respondents shall prepare a list of those daily wagers who are presently not given any work for want of work in the project in order of seniority and it will be notified on the notice board and copy of the same will also be sent to each person concerned, and as and when the work is available, in the order of seniority, it will be offered to those persons. Lastly, Shri Shelat states that the petitioners' services in fact are terminated so that there may not be any complaint of non-compliance of section 25-F of the Industrial Disputes Act, 1947. This is only the purpose of passing of this order otherwise their names shall continue in the list of daily wage employees and as and when the work is available, it is

submitted at the cost of repetition, it shall be offered to those persons in the order of seniority.

9. Despite of the statements aforesaid made by Shri S.N. Shelat, Additional Advocate General, I fail to see any justification in the insistence of the counsel for the petitioners to decide these matters on merits. The services of the petitioners have been terminated by the respondents treating them to be workmen and after compliance of the provisions of section 25-F of the Act, 1947. It is certainly an industrial dispute for which the petitioners have adequate efficacious remedy available under the Act aforesaid.

10. At this stage, very unreasonable contention has been raised by the learned counsel Shri M.C. Barot for the petitioners that these are the labour matters and this Bench has not been assigned the labour matters.

11. This is only the contention which at the threshold of it deserves to be rejected. The petitioners themselves have taken these matters to be service matters and all the time the same are listed before the Bench hearing the service matters. Otherwise also in case what the learned counsel for the petitioners is contending is correct then this Court is correct in its approach that these matters are not maintainable as the petitioners have efficacious alternative remedy under the Industrial Disputes Act, 1947.

12. In the result, all these special civil applications fail and the same are dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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